May 23, 2016

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Expanding Consumers' Video Navigation Choices, MB Docket No 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80; Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test, MB Docket No. 15-216.

Dear Ms. Dortch:

On Thursday, May 19, 2016, the undersigned and Brian Ford from NTCA – The Rural Broadband Association, together with member company representatives, Trent and Susan Boaldin of Epic Touch, Toni Rivas and Scott Warunek from Valley Telephone Cooperative, Inc., and Tim Brinkman from Garden Valley Telephone Co. (collectively, "the Group") met with Raelynn Remy, Diana Sokolow, Nancy Murphy, Steven Broeckaert, Martha Heller and Susan Singer from the Media Bureau.

The Group discussed the challenges rural providers face in providing video service to their subscribers. Specifically, they focused on the difficulties small providers have in negotiating retransmission consent agreements with broadcasters and the fact that while the market may be moving to over the top programming, consumers still want a traditional, linear product. Many rural consumers cannot receive an over-the-air broadcast signal and must rely on a paid service for local news, weather and sports, but the rates are rising at unsustainable rates due to increased programming costs. "Take it or leave it" contracts with non-disclosure provisions, the bundling of undesired programming with the broadcast programming and questionable one-sided negotiating tactics contribute to the rising costs and should be addressed.

The Commission was urged to bring some fairness into the negotiating process by increasing transparency. Currently, the good faith negotiation standard does not require broadcasters to share information, justify their explanation for rejecting offer terms, or substantiate reasons for their negotiating positions. A reciprocal duty to disclose would allow MVPDs access to information about retransmission consent rates, including base rates and volume discounts, and permit small MVPDs to better assess the prices being offered during negotiations.

The Commission was urged to declare as "per se" bad faith, non-disclosure clauses that prevent MVPDs from sharing the terms of their contracts with their advocates, regulators, and legal bodies. Shining a light on the process would likely ease the price discrimination between large, incumbent MVPDs, who are able to secure volume discounts and smaller providers who do not possess the leverage to negotiate favorable terms.

The Group also urged the Commission to address forced bundling. Broadcasters routinely engage in program tying by conditioning retransmission consent upon carriage of other programming. This practice harms consumers by increasing the cost of video service for unwanted programming and is anticompetitive to video providers attempting to differentiate their service in the market.

Questionable broadcast negotiating tactics, including presenting take it or leave it contracts less than 90 days before a contract expires, blocking customer access to otherwise available on-line content and trying to undermine the efforts of content buying cooperatives, were also discussed.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the rules of the Federal Communications Commission, a copy of this letter is being filed via ECFS.

Sincerely,

Jill Canfield
Jill Canfield
Vice President – Legal & Industry, Assistant
General Counsel

cc: Nancy Murphy
Diana Sokolow
Raelynn Remy
Steven Broeckaert
Martha Heller
Susan Singer